IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16701 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE SAIBABA AMUSEMENT PARK

Versus

SURENDRANAGAR DUDHREJ NAGAR PALIKA

Appearance:

1. Special Civil Application No. 16701 of 2004

MR SAMIR J DAVE for Petitioner No. 1

M/S THAKKAR ASSOC. for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/12/2004

ORAL JUDGEMENT

#. Rule. Mr.Pahwa, learned advocate waives service of

rule for respondent no. 1 and Mr.Mengdey, learned A.G.P. waives service of rule for respondent no.2.

#. With the consent of the parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by respondent no.1 - Chief Officer of Surendranagar Dudhrej Nagarpalika dated 21.12.2004, by which the petitioner is restrained from running Anand Mela at the place which is allotted by respondent no.1 - Nagarpalika.

#. On the allegation that the petitioner was indulging in gambling activities by playing certain games on which there was bet of money, show cause notice came to be issued calling upon the petitioner to show cause as to why the petitioner should not be restrained from running Anand Mela and using the land / plot allotted to the petitioner for which no objection certificate was given by respondent no.1. The petitioner replied to the said show cause notice denying the allegations and denying the fact that petitioner was indulging in gambling activities by playing certain games on which there was bet of money. However, respondent no.1 was not satisfied with the reply and explanation and therefore passed the impugned order dated 21.12.2004.

#. Mr.Samir Dave, learned advocate appearing for the petitioner has submitted that apart from the fact that respondent no.1 has no jurisdiction to pass such type of orders restraining the petitioner from running Anand Mela, as according to him, ultimate authority is respondent no.2 who has granted licence to run Anand Mela and the games which are being played in the Anand Mela are not, in any way, connected with the gambling activities. Considering the aforesaid submissions, he requested to allow the present petition.

#. In response to the notice issued by this Court, Mr.Navin Pahwa learned advocate appears for respondent no.1 who has filed affidavit-in-reply in which it is reiterated that the petitioner is indulging in gambling activities by playing certain games on which there was bet of money.

#. Considering the facts and circumstances of the case and considering the fact that ultimate authority would be respondent no.2 who has issued the licence, Mr.Mengdey was directed to get report from the District

Superintendent of Police, Surendranagar. Today, when the matter is called out, he has produced on record copy of the communication /report submitted by the District Superintendent of Police to respondent no.2 dated 29.12.2004.

#. Considering the fact that ultimate authority who has issued the licence is respondent no.2, respondent no.2 is directed to look into the same and also the report submitted by the District Superintendent of Police, Surendranagar dated 29.12.2004 and pass appropriate order on its own merits and in accordance with law after giving opportunity to the petitioner and all the concerned parties. However, considering the facts and circumstances of the case and the report submitted by the District Superintendent of Police, Surendranagar, the impugned order dated 21.12.2004 is hereby quashed and set aside with the direction to respondent no.2 to look into the allegation and to pass appropriate order on its own merits and in accordance with law considering the report submitted by the District Superintendent of Police, Surendranagar dated 29.12.2004 as early as possible.

#. In view of the above discussion, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)